

## REMARKS

### **A. INTRODUCTION**

Claims 1-9, 50, 52 – 59, 70-74, 77, and 101 are pending and rejected.

No amendments are made in this paper.

We request reconsideration of the Section 103(a) rejections at least because (1) Fiorini does not support what is asserted and (2) the proposed motivation would add unnecessary complexity to the telemarketing, credit card- and check-based system of Glickman.

A petition to revive this application for unintentional abandonment is filed concurrently with this paper.

### **B. REQUEST FOR CONTINUED EXAMINATION (RCE)**

This paper is being filed in response to an Office Action mailed December 14, 2004, and after a Notice of Appeal. A Request for Continued Examination (RCE), along with the appropriate fee, is being filed concurrently to ensure consideration of these remarks.

### **C. SECTION 103(A) REJECTIONS—GLICKMAN + LERNER**

Claims 9, 53, and 54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Glickman and Lerner. [Office Action, page 16]. We respectfully traverse the Examiner's Section 103(a) rejection.

Claim 9 includes the following feature: *wherein said offer amount is based, at least in part, on an amount of change due.*

Claims 53 and 54 include the following feature: *wherein said offer amount is based, at least in part, on at least one of an amount of change due or a round-up amount.*

The Examiner admits that Glickman does not teach or suggest either of the above features. [Office Action, pages 4, 8]. We submit that Lerner does not teach or suggest such features; the Examiner does not assert otherwise. The Examiner also does not suggest any evidence of the desirability of modifying the proposed combination of Glickman and Lerner in order to provide for the above features.

Accordingly, Glickman and Lerner cannot support a prima facie case of obviousness of Claims 9, 53, and 54. We request reconsideration of the rejection of Claims 9, 53, and 54.

**D. SECTION 103(A) REJECTIONS—GLICKMAN + FIORINI (+ WALKER)**

Claims 1-8, 50, 52, 55-59, and 70-74 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Glickman and Fiorini. [Office Action, page 3]. We respectfully traverse the Examiner's Section 103(a) rejection.

Claims 77 and 101 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Glickman, Fiorini, and Walker. [Office Action, page 18]. We respectfully traverse the Examiner's Section 103(a) rejection.

The Examiner appears to have misinterpreted Fiorini: "...Curt Sheely, the general manager at Christie's Café and Bakery already rounds up or down to avoid taking pennies and one way to round it up is to offer to customers a product for the value of the change due." [Office Action, page 4 (emphasis added)].

Fiorini does not appear to teach the subject matter that is underlined in the above quote. To the contrary, Fiorini strongly suggests that the rounding up by Curt Sheely does not include offering another product (Sheely receives complaints and is accused of "devaluing the dollar"). As the Examiner admits, Glickman does not teach the asserted subject matter either.

Also, Glickman is directed to inbound call centers infomercials, and describes payment by check or credit card. Because no physical currency trades hands (unlike the retail exchanges discussed in Fiorini) it is unlikely there would be spare change for check and credit card payments in the Glickman system. In fact, the proposed law discussed in Fiorini would not round up "sales paid by check or credit card." There is no suggestion in Fiorini or in Glickman of the desirability of modifying Glickman to allow for rounding up amounts or making offers based on spare change.

No combination of Glickman and Fiorini teaches all of the features of any of independent Claims 1, 50, 55, 57, 70, 77, and 101 (or dependent Claims 2-9, 52-54, 56, 58, 59, and 71-74), or suggests a motivation to combine the references in the manner proposed by the Examiner. We respectfully request withdrawal of the Section 103(a) rejections and allowance of the pending claims.

**E. ADDITIONAL COMMENTS**

Our silence with respect to the Examiner's other various assertions not explicitly addressed in this paper, including assertions of what the cited reference(s) teach or suggest, or the Examiner's interpretation of claimed subject matter, is not to be understood as agreement with the Examiner. As the Examiner has not established an unrebuttable *prima facie* case of obviousness for any of the

pending claims, for the reasons stated in this paper, we need not address the Examiner's other assertions at this time.

**F. AUTHORIZATION TO CHARGE APPROPRIATE FEES**

This response is being filed concurrently with a petition to revive for unintentional abandonment. Please grant a petition for any extension of time required to make this Response timely.

Deposit Account: 50-0271

Order No.: 00-004

Please charge any appropriate fees set forth in §§ 1.16 – 1.18 for this paper and for any accompanying papers to Deposit Account 50-0271. Please credit any overpayment to the same account.

**G. CONCLUSION**

It is submitted that all of the claims are in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

If the Examiner has any questions regarding this amendment or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at [mdowns@walkerdigital.com](mailto:mdowns@walkerdigital.com).

Respectfully submitted,

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Date

/Michael Downs 50252/  
Michael Downs  
Attorney for Applicants  
Registration No. 50,252  
[mdowns@walkerdigital.com](mailto:mdowns@walkerdigital.com)  
(203) 461-7292 /voice  
(203) 461-7300 /fax